



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
1100 Commerce Street
Dallas, TX 75242

501-03-00

**TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION**

Date: September 12, 2011

Release Number: **201149034**
Release Date: 12/9/2011

LEGEND

ORG – Organization name
XX – Date Address - address

ORG
ADDRESS

Person to Contact:
Badge Number:
Contact Telephone Number:
Contact Address:
Employer Identification Number:

CERTIFIED MAIL

Dear

This is a final adverse determination regarding your exempt status under section 501(c) (3) of the Internal Revenue Code (the Code). Our favorable determination letter to you dated October 19XX is hereby revoked and you are no longer exempt under section 501(a) of the Code effective January 1, 20XX.

The revocation of your exempt status was made for the following reason(s):

You have failed to produce documents to establish that you are operated exclusively for exempt purposes within the meaning of Internal Revenue Code section 501(c)(3), and that no part of your net earnings inure to the benefit of private shareholders or individuals. Also, you have failed to keep adequate books and records as required by IRC section 6001 and the regulations there under. In our letters dated November 19, 20XX, December 7, 20XX, and March 21, 20XX, we requested information necessary to conduct an examination of your Form 990 for the year ended December 31, 20XX. We have not received the requested information.

Section 1.6033-2(h)(2) of the Income Tax Regulations provides, in part, that every organization which is exempt from tax, shall submit such additional information as may be required by the Internal Revenue Service for the purpose of inquiring into its exempt status. You have not provided the requested information.

Contributions to your organization are no longer deductible under section 170 of the Internal Revenue Code, effective January 1, 20XX.

You are required to file Federal income tax returns on Form 1120. These returns should be filed with the appropriate Service Center for the year ending December 31, 20XX, and for all the tax years thereafter in accordance with instructions of the return.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: United States Tax Court, the United States Court of Federal Claims, or the United States District Court for the District of Columbia. A petition in one of these three courts must be filed before the 91st day after the date that this determination was mailed to you if you wish to seek review of our determination. Please contact the clerk of the respective court for rules regarding filing petitions for declaratory judgment by referring to the enclosed Publication 892. Please note that the United States Tax Court is the only one of these courts where a declaratory judgment action can be pursued without the services of a lawyer. You may write to the United States Tax Court at the following address:

Please understand that filing a petition for a declaratory judgment under IRC section 7428 will not delay the processing of subsequent income tax returns and assessment of any taxes due.

You also have the right to contact the Office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal Appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll free, 1-877-777-4778, and ask for the Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Taxpayer Advocate assistance cannot be used as substitute for established IRS procedures, formal appeals processes, etc. The Taxpayer Advocate is not able to reverse legal or technically correct tax determination, nor extend the time fixed by law that you have to file a petition in Court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling.

This letter should be kept within your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892

Form 886-A (Rev. January 1994)	Department of the Treasury- Internal Revenue Service Explanation of Items	Schedule number or exhibit
Name of Organization/Taxpayer ORG	Tax Identification Number EIN	Year/Period ended 12/31/20XX & 12/31/20XX

LEGEND

ORG - Organization name XX - Date Address - address City - city State - state
 President - President CO-1 through CO-16 = 1st through 16th COMPANIES

Issue:

Whether ORG's tax exempt status under Internal Revenue Code 501(c)(3) should be revoked.

Facts:

Organizational Information

The organizational information for ORG (ORG) is unknown. ORG's administrative file does not include its own organizational documents, determination letter, or the Form 1023. A request for its administrative file came back with the administration file for another organization based in City with the same EIN.

ORG's 20XX Form 990 indicates the organization is a 501(c)(3) located at Address, City, State. The 20XX Form 990 is the last return that was filed and is signed by President (also known as President), President and dated October 28, 20XX. The return was self-prepared.

A review of the INOLES report confirms ORG's address listed on the Form 990 and is exempt under 501(c)(3). According to INOLES, ORG's exemption date is also October 19XX.

Operational Information

Outreach Program

ORG has a community outreach program called "CO-1". The purpose of the program is to bring families and communities closer through education and awareness. CO-1's website mentions ORG and President. It states its expertise is medicine, research, advocacy, growth, awareness, care, support, and education. CO-1 is located at Address, City, State.

20XX website

Homepage

ORG's website address is website. The 20XX homepage informs that ORG is a registered non-profit 501(c)(3) tax exempt organization that was founded in 19XX and is governed by a Board of Directors. ORG considers itself to be dedicated in creating and sustaining life-long adapted HIV/AIDS awareness and preventatives programs for all. Its aim is to facilitate continuous HIV/AIDS low cost treatment directly to sufferers by engaging in collaborative relationships with medical and pharmaceutical industries, international communities and respective foreign governments so that the lives of all infected will be saved and the spread of the HIV/AIDS will be stopped.

Mission page

The mission page reads as, "Our mission is achieved by:

- Improving the quality of life for orphans & people affected by HIV/AIDS;
- Reducing the spread of HIV/AIDS;
- Supporting hospices & schools for orphans;
- Creating scholarship programs for the youth;

Internal Revenue Service

Department of the Treasury

TEGE: EO Examinations

24000 Avila Road MS 3000

Laguna Niguel, CA 92677

Date: April 11, 2011

ORG
ADDRESS

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dear

We have enclosed a copy of our report of examination explaining why we believe revocation of your organization's exempt status is necessary.

If you do not agree with our position you may appeal your case. The enclosed Publication 3498, *The Examination Process*, explains how to appeal an Internal Revenue Service (IRS) decision. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process.

If you request a conference, we will forward your written statement of protest to the Appeals Office and they will contact you. For your convenience, an envelope is enclosed.

If you and Appeals do not agree on some or all of the issues after your Appeals conference, or if you do not request an Appeals conference, you may file suit in United States Tax Court, the United States Court of Federal Claims, or United States District Court, after satisfying procedural and jurisdictional requirements as described in Publication 3498.

You may also request that we refer this matter for technical advice as explained in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*. If a determination letter is issued to you based on technical advice, no further administrative appeal is available to you within the IRS on the issue that was the subject of the technical advice.

If you accept our findings, please sign and return the enclosed Form 6018, *Consent to Proposed Adverse Action*. We will then send you a final letter revoking your exempt status. If we do not hear from you within 30 days from the date of this letter, we will process your case on the basis of the recommendations shown in the report of examination and this letter will become final. In that event, you will be required to file Federal income tax returns for the tax period(s) shown above. File these returns with the Ogden Service Center within 60 days from the date of this letter, unless a request for an extension of time is granted. File returns for later tax years with the appropriate service center indicated in the instructions for those returns.

You have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States court. The Taxpayer Advocate can, however, see that a tax matter that may not have been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate Assistance. If you prefer, you may contact your local Taxpayer Advocate at:

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Nanette M. Downing
Director, EO Examinations

Enclosures:
Publication 892
Publication 3498
Form 6018
Report of Examination
Envelope

Form 886-A (Rev. January 1994)	Department of the Treasury- Internal Revenue Service Explanation of Items	Schedule number or exhibit
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- Supporting AIDS-related public policy;
- Maintaining educational centers in major populated cities nationally, and by supporting local schools with HIV/AIDS prevention materials that we distribute in communities with a high ratio of HIV/AIDS case histories.
- Offering Rapid HIV/AIDS testing.
- Properly educating about drug use treatments to prevent substance abuse."

Objectives page

The objective page reads as, "THE ORG's focus is to provide for the HIV/AIDS orphans and communities affected by the epidemic. Our objectives are:

- To collaborate with our international and local U.S. partners to facilitate these educational centers, hospices and organizations;
- To create development programs that are appropriate and sustainable within the communities for which they are intended;
- To educate and inform the local communities about HIV/AIDS and those impacted by the disease;
- To engage in any other activities that the Foundation may consider incidental or conducive to the advancement or attainment of the above aims and objectives;
- To advance people into the 21st century by means of technology and education.

Strategy

ORG considers itself in becoming the leader in the global movement. ORG will use a variety of approaches and materials including a PR firm which will create red carpet events in the entertainment industry, as well as media, brochures, white papers, corporate website, and other means to facilitate HIV/AIDS awareness.

Measurement of Success

ORG measures its effectiveness in the following ways: (1) an annual evaluation of programs and services (2) the number of clients served (3) growth in Web site usage (4) growth in operating revenue (5) number of volunteers recruited (6) evaluation of educational presentations and treatment programs.

Board of Directors page

President is listed as the founder and executive director of ORG. He is also listed as CEO of CO-2, an industry leader in natural herbal products. President consults and advises top private companies around the globe.

Donations page

ORG refers to itself as a company and states that the donations it receives will be used to finance its ongoing operations and expenses here in the United States, as well as internationally. Its 20XX budget is \$ USD. Donations will used for further treatment, education, supporting hospices, providing technology and education and helping other organizations with the same mission. ORG reports that 85% of the budget goes towards the cause and % goes towards administrative costs.

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Facts page

HIV/AIDS information such as exposure, prevention, and statistical information are listed. The facts page also reads, "Make a donation, save a life."

20XX website

Homepage

The homepage shares the same information as 20XX except it also added that ORG provides client services including case management, housing assistance and a supplemental food pantry, HIV/AIDS prevention services including anonymous rapid HIV testing, outreach and referrals. ORG also provides basic needs like drinking water, transportation, housing assistance and clothing.

Programs page

Two thank you letters from other 501(c)(3) organizations are addressed to President or ORG. CO-3 thanks President for his contribution of \$.

The UN Foundation thanks ORG for its contribution but does not specify the dollar amount received.

Events page

Two events are listed. First event is World AIDS Day at the CO-4 located at Address, City, State. The event was held on December 1, 20XX at 7:00 pm. No other information is provided.

Information for the second event is CO-5, Address, City, State. "Cocktail attire, live entertainment, and complimentary parking" is listed. Donation is \$. Ticket contact information is Address, City, State. The event was held December 17, 20XX.

How to Help page

ORG lists that it is seeking funds from contributions and grants. These funds will be used for unrestricted operating expenses, special projects, building improvements and endowments.

Activities

A review of the case file documents and online research shows that ORG has organized several fundraising activities.

Fundraising advertisements

ORG organized an 18-month advertising campaign. ORG's fundraising advertisements have appeared on the CO-6 website. The advertisement read as, "DONATE NOW. STOP AIDS. ORG". The ad had a button that read, "Click Here". Per a CO-14 article dated March 24, 20XX, when President was asked about the fundraising advertisements, he responded that they were part of "a little fundraising campaign to pay the rent." ORG's fundraising advertisements have also appeared on websites of CO-7, CO-8, and the print edition of the CO-9.

New Year's Eve House Party!

The Mass Appeal organized a fundraising event, New Year's Eve House Party!, hosted by actors, and , and held on December 31, 20XX. Location of the event was

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held at the private home of music producer, . Pre-sale party tickets were a \$ donation each and VIP party tickets were a \$ donation each. Proceeds benefited the CO-11 and The ORG.

Love Conquers H8

ORG's Facebook page lists a fundraising event named, "EVENT". The event was held on February 14, 20XX at the CO-10 located at Address, City, State. The purpose of the black tie gala was to bring greater awareness to people who are in love and living with HIV/AIDS. The event honored City Mayor (who did not attend) and Director of the CO-11. Guest speakers included City County Democratic Party Chairman; CO-12 Board of Trustees, and Senior Political/Community organizer. Photos from the event were posted. The event was also listed on website and listed ticket prices at \$ each.

Help Stop AIDS Golf Classic

ORG organized the 20XX Help Stop AIDS Golf Classic at the CO-13 in City, State. The event honored State Governor. Special invited guest was . The event cost \$ per person, which included green fees. A special gift was given for the first 100 participants. Other research shows that and did not attend the event.

Sponsorship opportunities were also available for the golf event. Sponsorship information and benefits provided are as follows:

Presenting Sponsor- \$

- Company name and corporate logo on collateral material as Presenting Sponsor
- On screen recognition as the Presenting Sponsor at the reception
- Company name and corporate logo listed on The ORG website
- Corporate logo displayed on red carpet "step and repeat"
- Gift recognition for ten children in honor of sponsor's name
- Full page advertisement
- VIP seating for 10 guests

Platinum Sponsor- \$

- Company name and corporate logo on collateral material
- On screen recognition at the reception
- Company name and corporate logo listed on The ORG website
- Gift recognition for five children in honor of your name
- ½ page advertisement
- VIP seating for 10 guests

Gold Sponsor- \$

- Company name and corporate logo on collateral material
- On screen recognition at the reception
- Company name and corporate logo listed on The ORG website
- Gift recognition for five children in honor of your name

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- ¼ page advertisement
- VIP seating for 10 guests

Form 990:

Form 990 for the year 20XX reports total income and expenses as \$0. Assets and liabilities are reported as \$ also.

Form 990 for the year 20XX was not filed. Form 990 for the year ending December 31, 20XX is the last return filed by ORG even though the organization continued to carry on its activities in 20XX and 20XX.

Other

Per a CO-14 article and documents in the case file, the State Attorney General filed a lawsuit against the ORG for unlawful fundraising and falsifying official documents. ORG was not recognized by the State of State as a charitable organization. It was found that ORG and President solicited contributions in State by placing advertisements on the websites of City-area newspapers, including but not limited to the CO-15 and the CO-16.

Online research and case file documents show that President is owner of a company called "CO-2". CO-2 sells herbal immunity drinks for AIDS, which have not been shown to be effective in scientific studies. Per a Positively Aware online article, President claims he has no financial stake in the company and is quoted, "I'm the one that was referring people to CO-2." Yet, ORG's website lists President as CEO of CO-2, which shares the same address as ORG.

Contact

- 11/19/XX A call was made to the phone number listed on the Form 990 for the year ending December 31, 20XX. Phone line was disconnected.
- 11/19/XX Letter 3611 and Form 4564 Information Document Request #1, and Publication 1 were mailed via certified mail.
- 12/01/XX A signed U.S. Postal Services Certified Mail Receipt was returned. The signature date was November 24, 20XX.
- 12/07/XX A second set of Letter 3611, Form 4564, and Publication 1 were mailed via certified mail.
- 12/XX/XX A signed U.S. Postal Services Certified Mail Receipt was returned. The signature date was December 8, 20XX.
- 2/07/XX A letter proposing revocation under IRC §6033, Form 4564, and Publication 1 were mailed via certified mail.

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- 2/XX/XX A U.S. Postal Services Certified Mail Receipt was returned with ORG's address stamped on the signature line. It was dated February 9, 20XX.
- 3/21/XX Letter 3611, Form 4564 #1 and #2, and Publication 1 were mailed via certified mail.
- 3/25/XX A signed U.S. Postal Services Certified Mail Receipt was returned. The signature date was March 22, 20XX.

On December 17, 20XX, a postal tracer was mailed to the Postmaster in City, State. On January 17, 20XX, the postal tracer was returned confirming ORG's mail is delivered to the address given.

Law

IRC § 501(c)(3) defines that a tax-exempt organization operating exclusively for charitable purposes cannot have any part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treas. Reg. §1.501(c)(3)-1(a) states in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. §1.501(c)(3)-1(b) defines the organizational test is when an organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its "articles") as defined in subparagraph (2) of this paragraph:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Treas. Reg. §1.501(c)(3)-1(c) defines that the operational test is based on the primary activities and the distribution of earnings:

- (1) *Primary activities.* —An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.
- (2) *Distribution of earnings.* —An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

IRC § 6001 provides that every person liable for any tax imposed by the IRC, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

IRC § 6033(a)(1) provides, except as provided in IRC § 6033(a)(2), every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income,

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receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe.

Treas. Reg. § 1.6001-1(a) in conjunction with Treas. Reg. § 1.6001-1(c) provides that every organization exempt from tax under IRC § 501(a) and subject to the tax imposed by IRC § 511 on its unrelated business income must keep such permanent books or accounts or records, including inventories, as are sufficient to establish the amount of gross income, deduction, credits, or other matters required to be shown by such person in any return of such tax. Such organization shall also keep such books and records as are required to substantiate the information required by IRC § 6033.

Treas. Reg. § 1.6001-1(e) states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Treas. Reg § 1.6033-1(h)(2) provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and IRC § 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of IRC § 6033 and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

In accordance with the above cited provisions of the Code and regulations under IRC §§ 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

Effective date of revocation

An organization may ordinarily rely on a favorable determination letter received from the Internal Revenue Service. Treas. Reg. §1.501(a)-1(a)(2); Rev. Proc. 20XX-4, §14.01 (cross-referencing §13.01 et seq.), 20XX-1 C.B. 123. An organization may not rely on a favorable determination letter, however, if the organization omitted or misstated a material fact in its application or in supporting documents. In addition, an organization may not rely on a favorable determination if there is a

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material change, inconsistent with exemption, in the organization's character, purposes, or methods of operation after the determination letter is issued. Treas. Reg. § 601.201(n)(3)(ii); Rev. Proc. 90-27, §13.02, 1990-1 C.B. 514.

The Commissioner may revoke a favorable determination letter for good cause. Treas. Reg. §1.501(a)-1(a)(2). Revocation of a determination letter may be retroactive if the organization omitted or misstated a material fact or operated in a manner materially different from that originally represented. Treas. Reg. § 601.201(n)(6)(i), § 14.01; Rev. Proc. 20XX-4, § 14.01 (cross-referencing § 13.01 et seq.).

Taxpayer's Position

Taxpayer's position is unknown at this time.

Government's Position

In order for an organization to retain its exempt status it must demonstrate to the Internal Revenue Service that it meets both the organizational and the operational tests. The organization must also meet the reporting requirements of its Form 990. The facts stated above indicate that The ORG failed the organizational and operational test and did not meet its filing requirements.

A charitable organization should be organized to have one or more exempt purposes. ORG is organized to pay the rent expense and provide a private benefit for ORG President, President. See Treas. Reg. §1.501(c)(3)-1(b).

A charitable organization should be operating in activities which accomplish one ore more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose. ORG engages in fundraising activities to support the private benefit of ORG President, President. See Treas. Reg. §1.501(c)(3)-1(c).

Every organization exempt from tax under section 501(a) shall file an annual return, stating specifically the items of gross income, receipts and disbursements, and such other information for the purposes of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and keep such records, render under oath such statements, make such other returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. ORG failed to correctly filed Form 990 for year ending December 31, 20XX and all years thereafter. ORG also failed to respond to Internal Revenue Service's request to exam its books and records. See IRC § 6033(a)(1).

Conclusion

It is the IRS's position that The ORG failed to meet the reporting requirements under IRC §§ 6001 and 6033 to be recognized as exempt from federal income tax under IRC § 501(c)(3). Since The ORG also was not organized and operating exclusively for the exempt purpose under IRC section 501(c)(3), its Federal tax exempt status under such section should be revoked effective January 1,

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20XX. The ORG is liable for filing Form 1120 U.S. Corporation Income Tax Return for the tax year ending December 31, 20XX and all years thereafter.